

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

TINA LINTON,)	
)	
Plaintiff,)	
)	
v.)	CIVIL CASE NO. 3:23-cv-177-ECM
)	(WO)
STADIUM-THAYER, LLC,)	
)	
Defendant.)	

MEMORANDUM OPINION and ORDER

Now pending before the Court is the Plaintiff's motion for default judgment against the Defendant and motion for hearing to set damages, (doc. 8), filed on March 31, 2023, in the Circuit Court of Russell County, Alabama.¹ Federal Rules of Civil Procedure 55 governs the procedure for obtaining a default judgment and creates a two-step procedure for obtaining a default judgment against an unresponsive party. *See* Fed. R. Civ. P. 55. An entry of default must precede an entry of a default judgment. When a defendant "has failed to plead or otherwise defend," and the plaintiff demonstrates that failure, the clerk must enter the defendant's default. Fed. R. Civ. P. 55(a). After entry of default, the plaintiff "must apply to the court for a default judgment." Fed. R. Civ. P. 55(b)(2). The Plaintiff has not applied for entry of default against the Defendant pursuant to Fed. R. Civ. P. 55(a). Thus, the motion for entry of default judgment is premature.

¹ This case was removed from the Circuit Court of Russell County, Alabama on March 31, 2023. An amended notice of removal was filed in this Court on April 3, 2023. (Doc. 8).

More importantly, however, on April 10, 2023, the Defendant filed an answer (doc. 9) so default against this defendant is inappropriate as it has filed a response to the Complaint. Accordingly, for the reasons as stated, and for good cause, it is

ORDERED that the motion for default judgment and motion for hearing to set damages (doc. 8) are DENIED.

Done this 9th day of June, 2023.

/s/Emily C. Marks
EMILY C. MARKS
CHIEF UNITED STATES DISTRICT JUDGE